

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by inserting after the enacting clause the following:

‘**Sec. 1. 7 MRSA §4203, sub-§1, ¶B**, as amended by PL 2003, c. 283, §2, is further amended to read:

B. When an aggrieved party within 30 days of the commissioner's decision appeals a decision of the commissioner regarding a livestock operations permit under section 4205, a request for a variance under section 4204, subsection 8 or, a certification under section 4210 or a commercial agricultural composting operations permit under section 4302, the board shall hold a hearing in accordance with Title 5, chapter 375, subchapter 4. The board may affirm, amend or reverse a permit or certification decision made by the commissioner. The board's decision is a final agency action; and

Sec. 2. 7 MRSA §4203, sub-§1, ¶C, as enacted by PL 2003, c. 283, §2, is further amended to read:

C. When an aggrieved party within 30 days of the commissioner's decision appeals a decision of the commissioner regarding site-specific best management practices prescribed for a farm or other issue governed under Title 17, section 2701-B or 2805 or regarding best management practices prescribed for a commercial agricultural composting operations permit under section 4302, the board shall hold a hearing in accordance with Title 5, chapter 375, subchapter 4. The board may affirm, amend or reverse a decision made by the commissioner. The board's decision is a final agency action. The board may also conduct an information-gathering meeting at the request of the department or any party with a legitimate interest to facilitate the complaint resolution process under Title 17, section 2701-B or 2805.’

Amend the bill in section 1 in §4301 by striking out all of subsection 5 (page 1, lines 27 and 28 in L.D.) and inserting the following:

‘**5. Farm.** "Farm" means land on which the commercial production of crops and animals useful to humans occurs, including, but not limited to, the production of seed, forages, sod, grains, feed, berries, flowers, vegetables, milk and milk products, poultry and poultry products, livestock and livestock products and other plants grown or animals raised for food, feed or fiber. To qualify as a farm under this chapter, the person owning or operating the farm must file an Internal Revenue Tax Form 1040 under the appropriate schedule for the reporting of profit or loss from a farm.’

Amend the bill in section 1 by striking out all of §§4302 and 4303 and inserting the following:

‘**§ 4302. Commercial agricultural composting operations permit**

Beginning on January 1, 2008, a permit issued by the commissioner pursuant to this section is required for a commercial agricultural composting operation.

1. Permit applications for commercial agricultural composting operation operational on April 1, 2007. An owner or operator of a commercial agricultural composting

operation that was operational on April 1, 2007 shall submit an application on a form prescribed by the commissioner no later than October 31, 2007. The commissioner shall issue a permit for a commercial agricultural composting operation in accordance with rules adopted under subsection 3.

2. Permitting of a commercial agricultural composting operation expanding or becoming operational after April 1, 2007. A person developing a commercial agricultural composting operation after April 1, 2007 shall obtain a permit from the commissioner prior to the facility becoming operational. A person proposing the expansion or significant modification of an operation eligible for permitting or permitted under subsection 1 shall obtain a permit prior to the expansion or modification of that operation. An applicant for a permit under this subsection shall submit an application on a form prescribed by the commissioner and the design and operation plans for the new operation or expansion or modification of an existing operation.

Upon receipt of an application under this subsection, the commissioner shall provide the Commissioner of Environmental Protection with a copy of the application and the design and operation plans. The commissioner shall review the application materials, consider written comments submitted by the Department of Environmental Protection and evaluate the proposal's conformity to best management practices established under subsection 3 prior to issuing a permit. A permit may not be issued under this subsection without the approval of both departments. The departments shall enter into a memorandum of agreement to facilitate application review and permitting decisions.

3. Rulemaking. The commissioner shall adopt rules to establish criteria for reviewing applications and issuing permits and to establish application fees for new and expanding operations based on the capacity of the proposed operation and other rules necessary to implement this chapter. The rules must describe the required components of the design and operation plans to be submitted under subsection 2.

The commissioner shall adopt rules to establish best management practices for commercial agricultural composting operations, a process for developing site-specific best management practices for an individual agricultural composting operation and timelines for implementation of best management practices prescribed by the commissioner. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

4. Inspection; assistance. The commissioner or commissioner's designee may enter the premises of a commercial agricultural composting operation for the purposes of inspecting the operation for compliance with best management practices. When the commissioner determines that best management practices are not in use or that standard best management practices are insufficient to prevent environmental harm or an adverse impact on neighboring residents or landowners the commissioner shall assist the owner or operator of the commercial agricultural composting operation in developing site-specific best management practices for that operation. At the commissioner's request, an employee of the Department of Environmental Protection designated by the Commissioner of Environmental Protection may enter the premises of a commercial agricultural composting operation to assist in developing best management practices to prevent an adverse impact on water quality.

5. Permit fees. A permit fee of \$25 must accompany an application submitted under subsection 1. The commissioner shall establish permit fees for proposals reviewed under subsection 2 through rulemaking. The fees may not be less than \$25 or more than \$100. The appropriate fee must accompany the application. The commissioner shall deposit all permit fees received under this section into the Nutrient Management Fund established in section 4208.

6. Violations. The following are civil violations for which a fine of up to \$1,000 plus an additional \$250 a day for each day the violation continues may be adjudged:

- A. Operation of a commercial agricultural composting operation without a permit; and
- B. Failure to implement best management practices in accordance with rules adopted under subsection 3 or site-specific best management practices developed under subsection 4.

7. Enforcement of environmental laws. If the commissioner finds that a possible violation of Title 38, chapter 3 or 13 has occurred, the commissioner shall send a written report describing the alleged violation to the Commissioner of Environmental Protection and a copy of the report to the Attorney General. Both departments shall work with the Attorney General to take appropriate enforcement action.

§ 4303. Revocation of commercial agricultural composting operation permit

If the commissioner finds that a person issued a permit under section 4302 has failed to comply with the best management practices, the commissioner may revoke that person's permit.

1. Notice. The commissioner shall give written notice of a revocation immediately following a decision to revoke. A notice of revocation must state the reason the permit is being revoked and the effective date of the revocation and must inform the person of the hearing provisions under subsection 2 and the appeals process under subsection 3.

2. Hearing. A person receiving a notice of revocation under subsection 1 may request a hearing on that revocation. A request for a hearing must be in writing and must be made not later than 30 days after receipt of the revocation notice required under subsection 1. The commissioner shall notify the person of the date and location of the hearing.

A person may present evidence at a hearing that might justify reinstatement of the permit.

3. Decisions; appeal. Decisions of the commissioner must be in writing. A person whose permit is revoked by the commissioner may appeal that decision to the Nutrient Management Review Board.'

Amend the bill in section 2 in §373 in the first paragraph in the 5th line (page 2, line 39 in L.D.) by striking out the following: "4303, subsection 4" and inserting the following: '4302, subsection 7'

Amend the bill in section 2 in §373 in the first paragraph in the next to the last line (page 3, line 1 in L.D.) by inserting after the following: "and" the following: 'working with the Department of Agriculture, Food and Rural Resources and the Attorney General'

Amend the bill in section 3 in subsection 20 in the first paragraph in the 2nd line from the end (page 3, line 10 in L.D.) by striking out the following: "4303, subsection 4" and inserting the following: '4302, subsection 7'

Amend the bill in section 3 in subsection 20 in the first paragraph in the last line (page 3, line 11 in L.D.) by inserting after the following: "and" the following: 'working with the Department of Agriculture, Food and Rural Resources and the Attorney General'

Amend the bill by inserting after section 3 the following:

'Sec. 4. Appropriations and allocations. The following appropriations and allocations are made.

AGRICULTURE, FOOD AND RURAL RESOURCES, DEPARTMENT OF

Division of Animal Health and Industry 0394

Initiative: Provides funding for one additional Agricultural Compliance Supervisor position and operating costs necessary to administer certain agricultural composting requirements.

GENERAL FUND	2007-08	2008-09
POSITIONS - LEGISLATIVE COUNT	1.000	1.000
Personal Services	\$53,303	\$48,929
All Other	\$12,126	\$10,322
GENERAL FUND TOTAL	\$65,429	\$59,251

Sec. 5. Effective date. Those sections of this Act that enact the Maine Revised Statutes, Title 38, section 373 and section 1304, subsection 20 take effect January 1, 2008.'

Amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

SUMMARY

This amendment is the majority report. It replaces the registration requirement for commercial agricultural composting operations with permitting provisions. It requires proposals for new commercial agricultural composting operations and proposed expansions and significant modifications of existing operations after April 1, 2007 to submit design and operation plans with an application to the Commissioner of Agriculture, Food and Rural Resources. It provides for review of the plans by the Department of Environmental Protection. It provides for the Nutrient Management Review Board to function as an appeals board for persons aggrieved by a decision of the Commissioner of Agriculture, Food and Rural Resources to revoke a permit. It amends the definition of "farm." It adds an appropriations and allocations section to the bill.

FISCAL NOTE REQUIRED

(See attached)